

Sub-Chapter 6

Dispute Resolution

42.2.601 UNIFORM TAX REVIEW PROCEDURE - DEFINITIONS - APPLICABILITY DATE (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; AMD, 1997 MAR p. 2199, Eff. 12/2/97; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.602 NOTICE TO TAXPAYER (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; AMD, 1993 MAR p. 570, Eff. 4/16/93; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.603 TAXPAYER OBJECTIONS TO AUDITOR'S ASSESSMENT OR REFUND DENIAL, OR DENIAL OR WAIVER OF PENALTY AND INTEREST (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; AMD, 1993 MAR p. 570, Eff. 4/16/93; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.604 CONSEQUENCES OF FAILURE TO OBJECT TO AN ASSESSMENT IN A TIMELY MANNER (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.605 DIVISION ADMINISTRATOR'S DECISION (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; AMD, 1993 MAR p. 570, Eff. 4/16/93; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.606 TAXPAYER OBJECTION TO DECISION OF THE DIVISION ADMINISTRATOR (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.607 ALTERNATIVE PROCEDURES (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.608 DIRECTOR OF THE DEPARTMENT OF REVENUE'S DECISION (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.609 TAXPAYER APPEALS TO THE STATE TAX APPEAL BOARD (Is Hereby Repealed.) (History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.610 DIRECTOR INITIATED REVIEW (Is Hereby Repealed.)
(History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.611 SETTLEMENT OF TAX DISPUTES (Is Hereby Repealed.)
(History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.612 DEPARTMENTAL PROCEDURES (Is Hereby Repealed.)
(History: Sec. 15-1-201, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1991 MAR p. 2495, Eff. 12/13/91; REP, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.613 DEFINITIONS The following definitions apply to rules found in this sub-chapter.

(1) "Alternative dispute resolution (ADR)" means the option of a voluntary, confidential, and cooperative means of resolving disputes. One objective is to reduce costs and risks inherent in adjudication or litigation for either the person or other entity and the department. Alternative dispute resolution can include mediation.

(2) "Centrally assessed appraisal report" means the report that notifies the customer of their market value for their centrally assessed property each year.

(3) "Centrally assessed assessment notice" means the final report sent to the customer and local department field office notifying them of the customer's market and taxable value by jurisdiction.

(4) "Customer" means any person or other entity subject, but not limited to a tax, license fee, royalty, or permit imposed by the state of Montana or a liability for payment of a debt collected by the department.

(5) "DOR form 577" means the extension form used to request an extension of the dates referred to in ARM 42.2.622 which is available on the department's internet homepage, <http://www.state.mt.us/revenue>.

(6) "Evidence" means documents or testimony offered during the mediation process or at a hearing. Such evidence includes but is not limited to direct or circumstantial, oral or written testimony, or real or demonstrative exhibits.

(7) "Hearing" means a proceeding with specified issues of fact or law to be heard before a finder of fact, from which a decision is rendered. The decision rendered by the finder of fact shall be considered the final agency decision in all matters not involving the Montana Administrative Procedure Act. The director as required by the Montana Administrative Procedure Act shall issue final agency decisions in liquor licensing matters.

(8) "Hearing examiner" means, within the context of the department's office of dispute resolution, either a finder of fact or mediator. When serving as a finder of fact, the "hearing examiner" performs an adjudicatory function. A hearing presided over by the finder of fact involves a proceeding addressing specific issues of fact or of law to be tried. The respective parties have the right to offer testimony and evidence, from which the finder of fact renders a decision subject to appeal. When the office of dispute resolution's "hearing examiner" functions as a mediator, the mediator shall interpose between the parties with the objective of assisting them to reconcile, adjust, or settle their dispute.

(9) "Initial conference" means a conference conducted by the office of dispute resolution to review all matters pertaining to a dispute, including which course may best address a situation deemed appropriate by the parties.

(10) "Liquor licensing matters" means disputes involving alcoholic beverages licenses administered by the department under authority of the Montana Alcoholic Beverage Code, (Title 16, chapters 1 through 6, MCA). Such disputes may include, but are not limited to, contested violations, denial of applications, revocations, lapses, and protests to license applications. It is understood that the Montana Administrative Procedure Act is considered controlling as to such liquor licensing matters. In addition, it is noted that some disputes with regard to such licenses do not involve the department as a party, such as protest hearings between protestors and license applicants.

(11) "Mediation" means a process by which a mediator assists opposing parties in arriving at a mutually acceptable settlement of a dispute. In mediation, the mediator does not have authority to enter any decision on the merits of the issues in dispute or to impose, in any way, a settlement upon the parties. The parties control the identification of issues submitted and the type of resolution to be agreed upon. The mediator may conduct joint or separate meetings with the parties. Matters raised in mediation are privileged, private, and confidential. Mediation is voluntary. No person, other entity, or the department is required to participate in any given case except by voluntary agreement. The mediation process is informal. No record is made.

(a) The following items include matters that cannot be disclosed by either party with respect to settlement:

(i) views expressed or suggested by a party with respect to a possible settlement;

(ii) admissions made by any party;

(iii) statements made or views expressed by any party, witness, the mediator, or any other person privy to the process; or

(iv) the fact that another party did or did not indicate a willingness to accept a proposal for settlement.

(12) "Mutually agree to extend" means extending a deadline based upon mutual agreement of the parties.

(13) "Notice of referral to the office of dispute resolution form (CVR-1)" is a form used by the department and customer to refer a disputed matter to the office of dispute resolution. This form is available on the department's internet homepage as stated in (1).

(14) "Office of dispute resolution (ODR)" means the department's dispute resolution office. This office handles disputes that cannot be resolved at a lower level within the department.

(15) "Other entity" means all businesses, corporations, or similar enterprises.

(16) "Party" means either the customer or the department.

(17) "Request for informal review form (AB-26)" is a form used by the department and the customer to record changes, appeals and issues pertaining to a particular customer. This form is available on the department's internet homepage, <http://www.state.mt.us/revenue>. It may be used by the customer to notify the department of a dispute concerning an amount shown on a property assessment notice or statement of account (SOA) for those items described in (19).

(18) "Settlement" means mutually agreed upon resolution of the disputed issues.

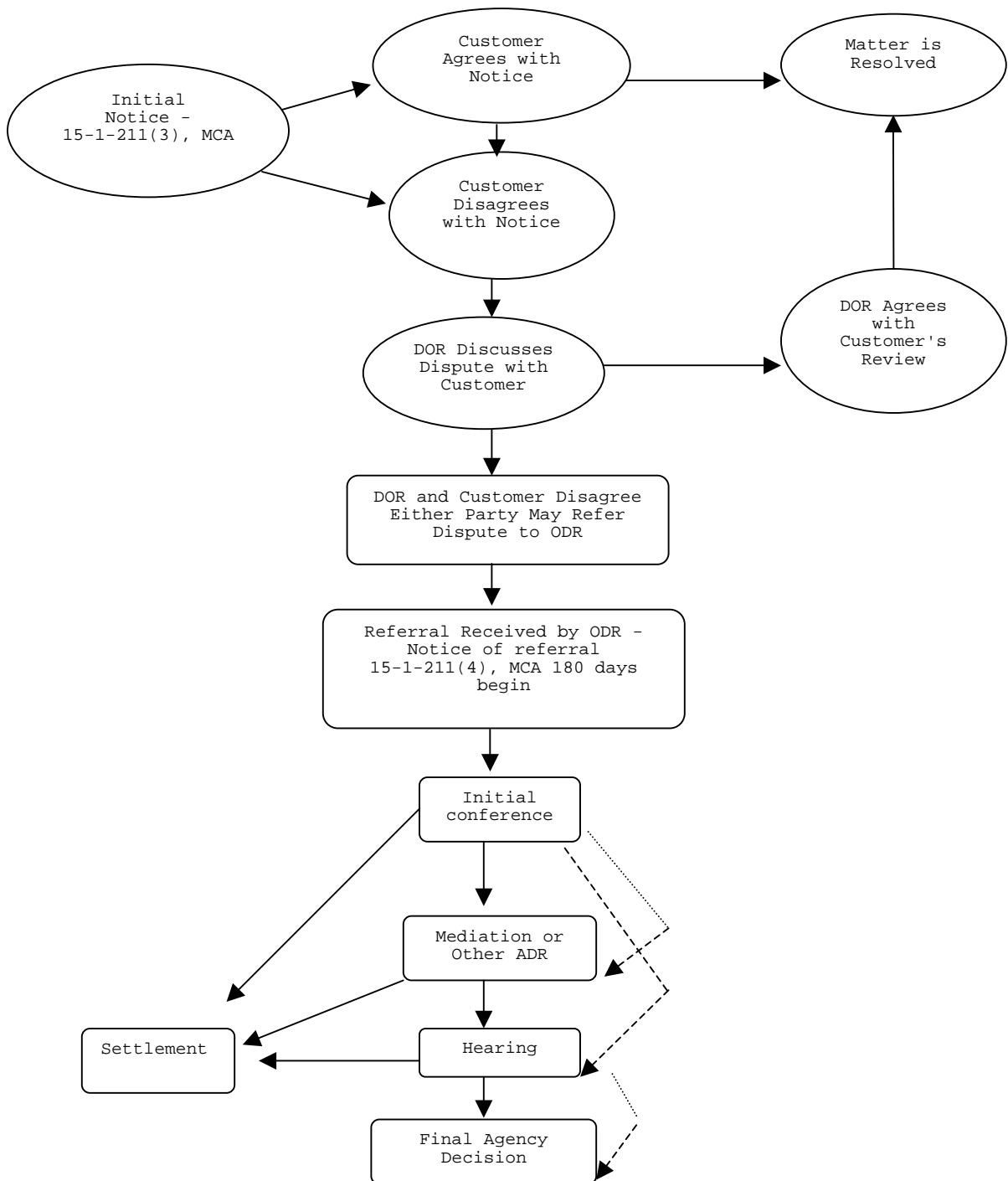
(19) "Statement of account (SOA)" means the first notice provided to the customer of an amount owed to the department or of a violation. It may include, but is not limited to, notice of refund reduction, tax debt, fine, or notice of a violation of the laws administered by the department. It does not include notices pertaining to inheritance taxes, estate taxes, or liquor licensing matters.

(20) "Written objections" include objections submitted through electronic media or delivered by the U.S. postal service, or any other generally accepted delivery service. For matters before ODR, electronic media filings must be supplemented with a hard copy document (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, 15-1-406, 15-23-102, 15-23-107, 15-30-257, and 39-51-1109, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99; AMD, 2000 MAR p. 3557, Eff. 12/22/00; AMD, 2002 MAR p. 3048, Eff. 11/1/02.)

42.2.614 PURPOSE (1) Section 15-1-211, MCA, provides for the creation of an office of dispute resolution (ODR) within the department and requires a uniform dispute review process. A primary objective of the resolution procedure is to make dispute resolution as unintimidating and inexpensive as possible to parties appearing before the department. The law exempts non-centrally assessed property, inheritance, estate taxes, liquor licensing, and the issue of whether an employer-employee relationship existed between the person or other entity subject to the requirements of Title 15, chapter 30, part 2, MCA, or whether the employment relationship was that of an independent contractor, from the dispute resolution process.

(2) As shown in the flow chart in (3), a final agency decision must be issued within 180 days from the date the CVR-1 form is received by the office of dispute resolution. Section 69-8-414, MCA, specifically requires the department to issue a final agency decision for uniform systems benefits (USB) matters within 60 days from the date the matter is submitted to ODR rather than the 180 days provided in 15-1-211, MCA.

(3) The following flow chart shows how the process will flow beginning with the initial notice provided to the customer:

DEPARTMENT OF REVENUE - DISPUTE RESOLUTION FLOW CHART

(History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211 and 69-8-414, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99; AMD, 2002 MAR p. 3048, Eff. 11/1/02.)

42.2.615 REFERRAL REQUIREMENTS (1) The notification requirement of a referral to the office of dispute resolution by the department is covered in 15-1-211, MCA.

(2) Referrals by the customer to the office of dispute resolution shall be submitted in writing and shall indicate the issues in dispute.

(3) The office of dispute resolution shall notify the appropriate division within the department that a referral has been received. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.616 DISCRETION AS TO FORMALITY OF PROCEDURES

(1) The department recognizes that a wide array of parties appears before the agency in connection with disputes. They range from large corporations employing professional tax counsel to individuals appearing on their own behalf contesting comparatively minimal amounts of tax, violation penalties, etc. It is the intent of the agency to accommodate all such disputes to the greatest extent possible. In particular, the agency seeks to conduct proceedings that are as unintimidating as possible. Persons who are not represented in disputes before the department should not feel apprehensive or dissuaded by procedural complexities, legalistic terms, or bewildering formalities. The hearing examiner will determine the level of formality and procedures appropriate for each dispute.

(2) In disputes where persons or other entities are not represented and are disputing smaller amounts of potential liability, it is understood that far less formal procedures may be used.

(3) In disputes where both parties are represented by counsel, applying rules of evidence and civil procedure as described or referred to in this chapter to provide structure to the process may be entirely warranted. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.617 INITIAL CONFERENCES (1) Following the office of dispute resolution's receipt of a person's or other entity's request for appeal in any dispute, a hearing examiner assigned to the case shall schedule an initial conference. The conference shall be scheduled as soon as practicable. Parties may participate at the initial conference either in person or through representatives, employees, or agents, as long as a requisite notice of appearance has been filed from an attorney or a written authorization to represent a party has been submitted from any other representative.

(2) Written notice of the conference shall be given at least 10 days prior to the date of the conference unless the parties waive notice. The initial conference may be conducted by telephone with the taxpayer and/or their representative.

(3) Any issue may be settled at the initial conference, including referring the dispute to mediation if both parties agree. In the course of the conference, the hearing examiner may take any appropriate action to settle, compromise, or reduce a deficiency subject to approval by the director or the director's designee. If the dispute cannot be settled at the conference, the hearing examiner shall set a time and date for subsequent mediation or a hearing which is as mutually satisfactory as possible to all concerned.

(4) Any discovery for the hearing may be discussed and the terms agreed upon at the initial conference.

(5) A party must exhaust their administrative remedies, whether by mediation or a hearing decision, prior to further appealing a matter. The parties may jointly stipulate to waiving a hearing.

(6) A record may not be kept of the initial conference. All such conference proceedings are considered confidential and privileged. Any matters raised do not constitute admissions against interest of any party participating in the conference.

(7) The hearing examiner conducting the initial conference shall not be the one presiding over the formal hearing if mediation occurs.

(8) Nothing in this rule may be construed as limiting a party's right to a hearing. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.618 MEDIATION PROCEDURES (1) The resolution of any matter in connection with a dispute may be pursued through mediation.

(2) Mediation may be requested at the initial conference. If both parties agree, mediation may also occur during the initial conference.

(a) The mediator may either be a hearing examiner from the office of dispute resolution, or a mediator from outside the department. The mediator shall be chosen with the consent of both parties.

(b) If an outside mediator is selected, the cost of the mediator shall be paid by the "person" or "other entity" as defined in ARM 42.2.613.

(3) It will be understood that any person appearing on behalf of a party shall have full settlement authority for the party they are representing.

(4) If mediation produces a settlement agreement the written agreement shall be prepared by the parties and if necessary, with the assistance of the mediator. The settlement shall be signed by the parties and the mediator and it shall be filed with the director or director's designee for approval.

(5) If mediation does not resolve all issues in a dispute, the parties shall prepare a stipulation that identifies the issues resolved and those that still remain in dispute. For the issues remaining unresolved, a hearing shall be scheduled before a hearing examiner. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.619 HEARING PROCEDURES (1) Except as provided herein, hearings shall be conducted in Helena, Montana.

(2) The location for hearings pertaining to liquor licensing matters are governed by ARM 42.12.108.

(3) Upon request by either party, hearings may be telephonic. Such requests will be granted unless the hearing examiner determines that telephonic participation may unfairly prejudice the rights of any party. If telephonic participation is requested, the hearing examiner will place the call at the designated time to whatever telephone number is provided by the person or other entity.

(4) Upon a showing of compelling circumstances by either party, the hearings officer may order a hearing to be conducted at a location other than Helena, Montana.

(5) Notice of the time and place for a hearing shall be given to the parties concerned, or their representatives if legal authorization is on file, not less than 14 days prior to the day fixed for such proceedings.

(6) A party may be represented by legal counsel at the hearing, and/or at every stage of adjudication. However, failure to obtain legal representation cannot be cited as grounds for complaint at a later stage in the adjudicative process or for relief on appeal from an adverse decision.

(a) Legal counsel must enter a notice of appearance.

(b) Any representative other than legal counsel must submit a written, signed statement authorizing the representative to act on the party's behalf.

(c) All documents and information pertaining to the dispute will be directed to the party's representative. They may be transmitted by facsimile number, e-mail address, or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's address as shown in the original filing.

(7) Hearing proceedings shall be conducted, at all times, with due regard for the confidentiality requirements imposed by 15-30-303, 15-31-511, MCA, and any other confidentiality requirements currently set forth in Title 15, MCA, or at any future time.

(8) Testimony at hearings shall be given under oath. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99; AMD, 2002 MAR p. 3048, Eff. 11/1/02.)

42.2.620 INFORMATION OFFERED IN HEARINGS (1) The hearing examiner shall have the discretion to impose rules of civil procedure and/or rules of evidence as deemed necessary. Imposition of any rules governing hearings shall be done by written order.

(2) Every party at a hearing shall have the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(3) At the discretion of the hearing examiner, or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to pre-file the testimony.

(a) Pre-filed testimony may be placed in the record without being read into the record at a hearing if the opposing parties have had reasonable access to the testimony before it is presented.

(b) If a party intends to question a witness on pre-filed testimony, that party must file a notice of intent to do so within a time frame agreed upon by the parties.

(4) The hearing examiner shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the hearing.

(5) Any party appearing at a hearing may submit a written statement addressing factual or legal issues, including cites of legal authority, if deemed necessary by the hearing examiner for a full and informed consideration of all matters. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)

42.2.621 APPEAL OF AN AGENCY DECISION (1) If a person or other entity receives an adverse agency decision in a tax dispute, they shall have 30 days to submit an appeal from such decision to the state tax appeal board.

(2) If no decision is rendered by the end of the 180-day period specified in 15-1-211, MCA, and ARM 42.2.616, the department shall issue a determination to the taxpayer. The determination shall inform them that the 180-day term has run without a decision and that they are therefore entitled to carry their appeal forward. The person or other entity shall then have 30 days to file a complaint with the appropriate reviewing authority. (History: Sec. 15-1-201 and 15-1-211, MCA; IMP, Sec. 15-1-211, MCA; NEW, 1999 MAR p. 2900, Eff. 12/17/99.)